

# Exhibit

1

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

**CASE NO.: 0:24-cv-60721-RS**

DAVID GORDON OPPENHEIMER,

Plaintiff,

v.

GAZETA BRAZILIAN NEWS  
CORPORATION,

Defendant.

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**DECLARATION OF DAVID GORDON OPPENHEIMER**

I, David Gordon Oppenheimer, declare and say:

1. I am over the age of 18 and otherwise competent to testify. I make the following statements based on personal knowledge.
2. I am an independent travel, aerial, and concert photographer, who operates Performance Impressions LLC as the primary outlet to sell prints of my work in addition to commercial licensing. I have a large archive of aerial and concert photography with over 500 galleries of photos from concerts, music festivals, travel, landmarks, and aerial photographs of major cities, rural, and mountain landscapes across the United States. My work has been featured on National Geographic, Rolling Stone, NBC, Goldman Sachs, HBO Sports and on display at the Museum of the city of New York.
3. In 2019, I created the aerial photograph of the Hard Rock Stadium in Miami, Florida, which is shown below and referred to herein as the “Work”.

**SRIPLAW**

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4. I registered the Work with the Register of Copyrights on May 7, 2019, and was assigned registration number V Au 1-356-215.

5. At all relevant times I was the owner of the copyrighted Work at issue in this case.

6. Defendant GAZETA BRAZILIAN NEWS CORPORATION (“Gazeta”) is a news platform. Upon information and belief, Gazeta owned and operated the website located at the URL <https://www.gazetanews.com/> (the “Website”).

7. On a date after the Work was created, but prior to filing of this action, Gazeta copied the Work.

8. On or about April 30, 2021, I discovered the unauthorized use of my Work on the Website.

9. I never gave Gazeta permission or authority to copy, distribute or display the copyrighted Work at issue in this case. Nor did I ever license the Work to Gazeta for any purpose.

10. Gazeta copied and distributed my copyrighted Work in connection with Gazeta's business for purposes of advertising and promoting Gazeta's day news outlet business, and in the course and scope of advertising and selling products and services.

11. After Gazeta copied the Work, it made further copies and distributed the Work on the internet to promote the sale of its news platform.

12. On February 27, 2024 and April 15, 2024, I, through counsel, notified Defendant in writing of my copyrights in the Work, and demanded that it cease the infringing use of the Work and pay a license fee for the unauthorized use of the Work.

13. The typical fee range I would receive for licensing the rights to use and display this Work on the internet is approximately \$2,457.00. I would typically license the Work to an entity like Gazeta for approximately \$7,371.00 for a commercial, non-exclusive display over a three-year period.

14. The licensing fee alone does not take into consideration the scarcity or quality of the Work, which increases its value.

15. As a result of Gazeta's infringement, the Work has lost significant value. Gazeta publicly disseminated attribution-free copies of the Work, which could have been accessed and downloaded by others from its Website. As a result, the Work has lost significant value. It is now less scarce and less exclusive.

16. I carefully manage the distribution of the Work so that it may retain its high value through its exclusive distribution. Accordingly, this scarce and high-quality image has lost significant value due to the potential widespread dissemination resulting from Gazeta's infringement.

17. The work has lost significant value by Gazetta's infringing dissemination and continued use long after being on noticed to cease and desist.

18. I believe my actual damages to be \$36,855.00. This is calculated by multiplying a licensing fee of \$2,457.00 for the Work for the three years of infringement, by a scarcity factor of five. This does not account for the unknown amount of profits gained by Defendant.

I declare under perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Asheville, North Carolina on this 26 day of August, 2024.



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David Gordon Oppenheimer